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THIERRY GUETTA a/k/a MR. BRAINWASH

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CLERK, U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES
BY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GLEN E. FRIEDMAN, Plaintiff, vs. THIERRY GUETTA a/k/a MR. BRAINWASH, and DOES 1 through 10, inclusive, Defendants.	Case No. CV10-0014 DDP (JCx) **ANSWER AND COUNTER-CLAIMS** **1. DECLARATORY RELIEF** **2. ATTORNEYS' FEES AND COSTS (17 USC § 505)** **DEMAND FOR JURY TRIAL**
THIERRY GUETTA a/k/a MR. BRAINWASH, Counter-Claimant, vs. GLEN E. FRIEDMAN, Counter-Defendant	

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Defendant THIERRY GUETTA a/k/a MR. BRAINWASH ("Defendant") by and through his counsel of record, hereby responds to the Complaint as follows:

ANSWER TO AVERMENTS RE INTRODUCTION AND OVERVIEW

1. Defendant denies the averments in paragraph 1 of the Complaint.

ANSWER TO AVERMENTS RE JURISDICTION AND VENUE

2. Defendant admits that Plaintiff purports to bring this action under the Copyright Act, 17 U.S.C. § 101, *et seq.*, and as a result of such allegations, jurisdiction lies before this court.

3. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 3, and on that basis denies those averments.

4. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 4, and on that basis denies those averments.

5. Defendant admits that Plaintiff purports to bring this action under the Copyright Act, 17 U.S.C. § 101, *et seq.*, but otherwise, denies the averments in paragraph 5.

ANSWER TO AVERMENTS RE PARTIES

6. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 6, and on that basis denies those averments.

7. Defendant admits the allegations in paragraph 7.

8. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 8, and on that basis denies those averments.

9. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 9, and on that basis denies those averments.

ANSWER TO CLAIM FOR RELIEF

10. Defendant hereby incorporates by reference as though fully set forth herein his responses to paragraphs 1 through 9 of the Complaint.

11. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 11, and on that basis denies those averments.

12. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 12, and on that basis denies those averments.

13. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 13, and on that basis denies those averments.

14. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 14, and on that basis denies those averments.

15. Defendant denies the averments in paragraph 15 of the Complaint.

16. Defendant denies the averments in paragraph 16 of the Complaint.

17. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 17, due in large part to the fact that the image is illegible, and on that basis denies those averments.

18. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 18, due in large part to the fact that the image is illegible, and on that basis denies those averments.

19. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 19, due in large part to the fact that the image is illegible, and on that basis denies those averments.

20. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 20, due in large part to the fact

that the image is illegible, and on that basis denies those averments.

21. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 21, and on that basis denies those averments.

22. Defendant does not have sufficient information or knowledge sufficient to either admit or deny the averments contained in paragraph 22, and on that basis denies those averments.

23. Defendant denies the averments in paragraph 23 of the Complaint.

24. Defendant denies the averments in paragraph 24 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST DEFENSE

(Failure to State a Claim)

25. Plaintiff's Complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

(First Amendment)

26. Any purported use by Defendant is an exercise of free speech and constitutionally protected by the First Amendment of the United States Constitution.

THIRD DEFENSE

(Fair Use of Copyright)

27. Any use by Defendant of Plaintiff's copyrighted work, if any is found to exist, is fair use under 17 U.S.C. §107.

FOURTH DEFENSE

(Innocent Intent)

28. Assuming solely for the sake of asserting this defense that any use of infringement can be proven, Defendant was not aware and/or did not have reason to believe that his acts constituted an infringement of copyright.

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FIFTH DEFENSE

(De Minimis)

29. The alleged use by Defendant, if any, is de minimis.

SIXTH DEFENSE

(Estoppel and Waiver)

30. Plaintiff's claim is barred by the doctrines of equitable estoppel and waiver.

SEVENTH DEFENSE

(Federal Copyright Statute of Limitations)

31. A separate affirmative defense is asserted to the extent that Plaintiff's claim may be barred by 17 U.S.C. § 507 (b).

EIGHTH DEFENSE

(Laches)

32. Plaintiff's claim is barred by laches.

NINTH DEFENSE

(License or Consent)

33. Any copying of Plaintiff's work (which Defendant denies and assumes only for sake of asserting this defense) was consented to by the owner of the appropriate rights in Plaintiff's works.

TENTH DEFENSE

(Reservation)

34. Defendant reserves the right to assert additional affirmative defenses as further circumstances and discovery warrant.

ANSWER TO PRAYER FOR RELIEF

35. The Complaint should be dismissed with prejudice;

36. The Defendant should be awarded costs including attorney's fees;

37. Such other and further relief as the court may deem just and proper.

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COUNTERCLAIMS

Defendant and Counter-Claimant THIERRY GUETTA a/k/a MR. BRAINWASH ("Counter-Claimant") by and through his counsel of record, hereby alleges as follows:

JURISDICTION

1. This is a counterclaim based upon a copyright infringement action. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1338 and pursuant to 17 U.S.C. Sec. 301, *inter alia*. Counter-Claimant seek declaratory judgment of non-infringement of copyright as to Counter-Defendant and his costs and attorney's fees.

VENUE

2. Venue in this judicial district is proper as Counter-Defendant selected this venue for the Complaint.

THE PARTIES

3. Counter-Claimant THIERRY GUETTA a/k/a MR. BRAINWASH is an individual who can be located within this district.

4. Counter-Claimant is informed and believes and on that basis alleges that Counter-Defendant is an individual who is a citizen of the State of New York.

COUNTERCLAIM ONE

(Declaration of Non-Infringement of Copyright against all Counter-Defendants)

5. Counter-Claimant realleges and incorporates by reference all allegations contained in paragraphs 1 through 5 as though said allegations were set forth in their entirety herein.

6. This is an action for declaratory judgment of non-infringement of copyright against Counter-Defendant who has sued Counter-Claimant herein. Counter-Defendant has claimed that various artistic creations constitute an infringement of Counter-Defendant's alleged copyright in a photograph.

7. An actual, immediate, and justiciable controversy exists within the jurisdiction of this Court under 28 U.S.C. § 1338 as to the infringement of the alleged copyright for the photograph because Counter-Claimant contends and Counter-Defendant denies that the

use of the photographic image(s) does not infringe any copyright.

8. Counter-Claimant is entitled to a declaration from this court that Counter-Claimant has not committed copyright infringement as to any copyright purportedly owned by Counter-Defendant.

9. Such a declaration is necessary and appropriate at this time so that the parties may ascertain their rights under copyright.

COUNTERCLAIM TWO

(Costs and Attorney's Fees under 17 U.S.C. § 505 against Counter-Defendant)

10. Counter-Claimant realleges and incorporates by reference all allegations contained in paragraphs 1 through 5 as though said allegations were set forth in their entirety herein.

11. This action arises under 17 U.S.C. § 505. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. § 1338(a).

12. Counter-Claimant alleges that Counter-Defendant's claims of copyright infringement against Counter-Claimant are entirely without merit. Moreover, Counter-Claimant believes that Counter-Claimant will prevail on the merits of this Counterclaim against Counter-Defendant. Counter-Claimant is informed and believes that the claim(s) asserted by Counter-Defendant were and are wholly without merit, yet he has refused to dismiss such claim(s) for copyright infringement with prejudice. Therefore, Counter-Claimant seeks to recover his cost and attorney's fees generated by the assertion of claims of copyright infringement.

13. Counter-Claimant is entitled to recover his costs and attorney's fees as he will be deemed the prevailing party in the action based on copyright infringement.

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WHEREFORE, Counter-Claimant prays for the following:

1. For a declaration of no infringement of copyright;

2. For an award of attorney's fees and costs;

3. For such other and further relief as the court may deem just and proper.

Dated: March 5, 2010

LAW OFFICES OF ALAN S. GUTMAN

By: ______________________
Alan S. Gutman
Attorneys for Defendant and Counter-Claimant
THIERRY GUETTA a/k/a MR. BRAINWASH

DEMAND FOR JURY TRIAL

Defendant and Counter-Claimant demand trial by jury.

Dated: March 5, 2010

LAW OFFICES OF ALAN S. GUTMAN

By: ______________________
Alan S. Gutman
Attorneys for Defendant and Counter-Claimant
THIERRY GUETTA a/k/a MR. BRAINWASH

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not party to the within action; my business address is 9401 WILSHIRE BLVD., SUITE 575, BEVERLY HILLS, CA 90212-2918.

On **March 5, 2010** I served the foregoing document described as **ANSWER AND COUNTER-CLAIMS** on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

DOUGLAS A. LINDE, ESQ.
ERICA ALLEN, ESQ.
THE LINDE LAW FIRM
9000 SUNSET BLVD., SUITE 1025
LOS ANGELES, CA 90069
TELEPHONE: 310-203-9333
FACSIMILE: 310-203-9233

[XX] BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Beverly Hills, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

[] E-MAIL: I transmitted the document to which this is attached via email to the email addresses listed above.

[] BY PERSONAL SERVICE: I caused the envelope to be delivered by hand to the offices of the addressee.

[] BY FACSIMILE TRANSMITTAL: I sent by facsimile the above document on at .m. to the facsimile machine number identified above.

[] BY FEDERAL EXPRESS OVERNIGHT DELIVERY: I caused the above document to be sent by Federal Express overnight delivery, fully prepaid, in accordance with Code of Civil Procedure § 1013(c).

Executed on **March 5, 2010** at Beverly Hills, California.

[XX] (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction this service was made.

CECIBEL ESCOBAR